

**AN ORDINANCE
BY PUBLIC SAFETY AND LEGAL ADMINISTRATION COMMITTEE**

AN ORDINANCE TO AMEND CHAPTER 2, ARTICLE XVI, DIVISION 11, SECTION 2-2211 AND CHAPTER 2, ARTICLE XVI, DIVISION 11, SECTION 2-2212 TO PROVIDE FOR THE DISCLOSURE OF PUBLIC POLICE AND CORRECTIONS DOCUMENTS TO THE CITIZEN REVIEW BOARD; TO AMEND CHAPTER 98, ARTICLE II, SECTION 98-26(B)(3) AND CHAPTER 98, ARTICLE IV, SECTION 98-153(B)(3) TO REQUIRE THE CHIEFS OF POLICE AND CORRECTIONS TO APPEAR BEFORE THE CITIZEN REVIEW BOARD UPON REQUEST AND SET FORTH THE REASONS FOR DELAYS IN INTERNAL INVESTIGATIONS INTO THEIR EMPLOYEES' CONDUCT; AND FOR OTHER PURPOSES

WHEREAS, the City of Atlanta has an interest in maintaining the public health, safety and welfare; and

WHEREAS, the City of Atlanta is authorized to, through its legislative powers, adopt clearly reasonable ordinances, resolutions, or regulations relating to its property, affairs, and local government for which no provision has been made by general law; and

WHEREAS, on March 13, 2007, Mayor Shirley Franklin approved Ordinance 07-O-0141 which amended the City of Atlanta Code of Ordinances Chapter 2, Article XVI (Boards, Councils, Commissions and Authorities) to create Division 11 (Citizen Review Board) in order to codify the establishment of a civilian advisory board for the purpose of conducting investigations into allegations of misconduct made against employees of the Atlanta Police Department and the Department of Corrections; and

WHEREAS, Chapter 2, Article XVI, Division 11, Section 2-2211 gives the Citizen Review Board, (the 'CRB') full access to all relevant police department and corrections documents in order to accomplish its goals; and

WHEREAS, no distinction is made in Chapter 2, Article XVI, Division 11 between documents contained within administrative or criminal investigation files; and

WHEREAS, no protection from disclosure of confidential records and documents of the departments of police and corrections is afforded in Chapter 2, Article XVI, Division 11; and

WHEREAS, in accordance with Chapter 2, Article XVI, Division 11 Section 2-2211(l), all hearings of the CRB, where documents provided by the departments of police and corrections would be examined and discussed must be open to the public except when in the opinion of the board, executive sessions are required; and

WHEREAS, it is the policy of the State of Georgia as set forth in O.C.G.A. § 50-18-70, to give the public broad access to all documents, papers, letters, maps, books, tapes, photographs,

computer based or generated information, or similar material prepared and maintained or received in the course of the operation of a public office or agency; and

WHEREAS, despite this liberal policy favoring public access to documents and records of public agencies, the Georgia General Assembly has specifically allowed public agencies protect from disclosure certain records including but not limited to:

Records that are specifically required by the federal government to be kept confidential; (O.C.G.A. § 50-18-72(a)(1));

Records compiled for law enforcement purposes to the extent that production of such records would disclose the identity of a confidential source, disclose confidential investigative or prosecution material which would endanger the life or physical safety of any person, or disclose the existence of a confidential surveillance or investigation; (O.C.G.A. § 50-18-72(a)(3));

Records of law enforcement, prosecution, or regulatory agencies in any pending investigation or prosecution of criminal or unlawful activity, other than initial police arrest reports and initial incident reports; (O.C.G.A. § 50-18-72(a)(4)); and

Records that consist of confidential evaluations submitted to, or examinations prepared by, a governmental agency and prepared in connection with the appointment or hiring of a public officer or employee; and records consisting of material obtained in investigations related to the suspension, firing, or investigation of complaints against public officers or employees until ten days after the same has been presented to the agency or an officer for action or the investigation is otherwise concluded or terminated; (O.C.G.A. § 50-18-72(a)(5)); and

WHEREAS, to give the CRB access to records, which it deems relevant to its investigations, but which have been afforded protection from public disclosure by the Georgia General Assembly not only would be in direct contravention to Georgia Public Policy, but could also compromise the integrity of criminal and administrative investigations of the departments of police and corrections.

WHEREAS, while it is the desire of the City of Atlanta to avoid any compromise of the integrity of criminal and administrative investigations of the departments of police and corrections, it is also the City's desire to assure the CRB that the departments of police and corrections will not be able to withhold records consisting of material obtained in investigations related to the suspension, firing, or investigation of complaints against public officers or employees indefinitely and without explanation; and

WHEREAS, Chapter 98, Article II, Section 98-26 and Chapter 98, Article IV, Section 98-153 set forth the duties of the police chief and the chief of correction respectively; and

WHEREAS, it is the desire of the City of Atlanta that sections 98-26 and 98-153 should be amended to set forth that where internal investigations into an employee's conduct extend beyond 90 days in duration, the chiefs of police and corrections or their designees must, upon request by the CRB, appear before the CRB and explain the reasons for such a delay.

IT IS HEREBY ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:

Section 1: That Chapter 2, Article XVI, Division 11, Section 2-2211 of the City of Atlanta Code of Ordinances be amended by deleting the existing language in its entirety and substituting therefore as follows:

Sec. 2-2211. Powers and duties of the board.

(a) The board shall advise the mayor, the president of council, council members and the chief of police and the chief of corrections on policies and actions of the police and corrections department with the purpose of improving the ability of police personnel to carry out their duties, and to improve the relationship between the department, corrections and the community.

(b) The board shall have the power to conduct investigations and public hearings.

(c) The board shall have full discretion to select appropriate individual incidents to review and broader issues to study which may be of concern to the community, the police and corrections department, or the chiefs of police and corrections; provided, however, that the board shall, to the best extent possible, minimize duplication of effort between the board and any other existing agencies which have jurisdiction over the same matter. The mayor, the president of council, council members and the chiefs of police and corrections, and other responsible officials shall ensure that all such agencies cooperate to the greatest extent possible in the performance of their respective activities, studies, and operations.

(d) The board may initiate studies upon request to the board by any member of the public or the police department and the department of corrections, or at the board's own discretion. The board may review specific complaints or incidents of misconduct against individual police officers; including those involving language related to race, ethnicity, religion, gender, sexual orientation or disability. **The board shall have access to such complaints irrespective of whether they be contained in any pending investigative files of the departments of police or corrections.**

(e) In order to accomplish its goals as set forth above, the board shall, have full access to relevant police department and corrections personnel for interview and to relevant **public** documents, including, but not limited to, the following:

- (1) **Public** OPS files, citizen complaints, and **public** determinations made pursuant thereto; **public police** department and corrections review files; **public** ethics and accountability files, and the **public** files of any other internal investigative agency charged with investigating police misconduct incidents;

- (2) Police paperwork (e.g., **public** police documents and other paperwork produced by the **police** department and corrections for the purpose of investigating suspects or to aid in their prosecution);
- (3) **Public** information related to past assignments and disciplinary action;
- (4) **Public** police and corrections directives, and other **public** police documents that the board deems relevant to the issue under review;
- (5) All **public** general summaries, **public** statistical compilations, and other **public** internal reports on shootings, injuries, and complaints of abuse, training, and any other issues related to the work of the board.
- (6) The board, at its discretion, may make specific recommendations at any time, and shall issue a public report summarizing its activities and recommendations not less than once a year to the mayor, the president of council, council members, the chiefs of police and corrections, and the city ethics officer, and shall make copies of the report available to the public in the office of the Municipal Clerk of the City of Atlanta.
- (7) No board finding or recommendation shall be based solely upon an unsworn complaint or statement, nor shall prior unsubstantiated, unfounded, or withdrawn complaints be the sole basis for any such finding or recommendation.
- (f) The board shall acknowledge receipt of complaints filed by individuals alleging police or corrections misconduct within ten business days of receiving any such complaint. Such response shall indicate whether, in the exercise of its discretion, the board shall study the allegations made, not study them, or request additional information to enable it to make a decision on its options.
- (g) The board shall have the responsibility of informing the public about the board and its duties, and shall develop and administer an ongoing program for the education of the public regarding the provisions of this Code Section. In addition, the chiefs of police and corrections or a designee shall meet with the board periodically to aid in its fact-gathering function and pursuant to the provisions of the Atlanta Code of Ordinances.
- (h) All employees of Atlanta City Government are hereby directed to fully cooperate with the board by promptly producing **all public** documents, records, files, and any other information that the board may request. In addition employees, on request of the board, shall be available to meet with and be interviewed by, the board or its representatives, and/or to testify before the board. **Furthermore, the board shall have the power to require that the chiefs of police and corrections or their designees to appear before it during a regularly scheduled hearing to specify the reasons for any delays in internal investigations into employees' conduct in accordance with City of Atlanta Code of Ordinances sections 98-26(b)(3) and 98-153(b)(3).**

(i) The chair may request that the committee on council exercise its subpoena power to compel access to, or production of such **public** materials or the appearance of such person as may be requested.

(j) Failure to comply with a subpoena pursuant to section 2-2211 shall be punishable in accordance with section 1-8 of this Code.

(k) Corrections or police personnel who are designated the subject of a related criminal investigation by a local law enforcement agency may elect not to appear until the conclusion of that investigation. Hearings shall be informal and strict rules of evidence shall not be applied. Testimony under oath shall be received from all persons who appear and purport to have information which is material to the complaint. A record shall be kept and shall be made available, upon payment of costs, to any person requesting same.

(l) All hearings shall be open to the public, except when, in the opinion of the board, executive sessions are required.

(m) The board shall have the power to recommend that the chief of police and the chief of corrections take certain actions.

(1) The board may recommend general reforms (such as changes in training, changes in the preservation of records, changes in counseling available to officers) or specific actions directed at individual officers (including, but not limited to, hiring, firing, promotion, demotion, punishment, or commendation);

(2) provided, however, that the chiefs of police and corrections shall retain full and ultimate authority, power, discretion, management prerogatives, and responsibility to set disciplinary policies or take other lawful actions they deem appropriate relative to the police department and corrections under the provisions of the Atlanta Code of Ordinances;

(3) Provided, further, that nothing in this section shall be construed to limit the rights of members of the police department and corrections with respect to disciplinary action, including but not limited to the right to notice and a hearing, which may be established by any provision of law or otherwise. The provisions of this section shall not be construed to prevent or hinder the investigation or prosecution of members of the department for violations of law by any court of competent jurisdiction, a Federal or State Grand Jury, the United States Attorney for the State of Georgia, the Fulton County District Attorney, or other authorized officer, agency, or body.

(4) The chief may not accept a recommendation from the board that shall punish the same officer more than once for the same act or omission that constitutes misconduct for which the officer has already been punished by the city.

(n) The board shall report a summary of findings semi-annually to the public safety committee;

(o) Within 30 days of the submission of a recommendation for action by the board to the chief of police or corrections shall respond in writing regarding which recommendations are accepted, rejected, or will be implemented with modifications.

Section 2: That Chapter 2, Article XVI, Division 11, Section 2-2212 of the City of Atlanta Code of Ordinances be amended by deleting the existing language in its entirety and substituting therefore as follows:

Sec. 2-2212. Finding of necessity.

(a) It shall be the duty of the departments to provide such assistance as the board may reasonably request, to cooperate fully with studies by the board, and to provide to the board upon request **public** records, personnel, and other **public** materials which are necessary for the work of the board. It shall be unlawful for any document or information obtained through this process, or created by the board or any member of its staff, to be released to the public unless such document is deemed by the board (following consultation with the city attorney) to be a public record under the Georgia Open Records Act. **Disclosure of such documents or information shall be punishable in accordance with section 1-8 of this Code.**

(b) ~~The board and its members shall not make public any confidential police document, or information derived from any such confidential police document.~~ The findings of the board as they may relate to conclusions drawn from interviews, study, and review of documents, shall remain confidential until the board officially releases such findings; provided, however, that the board shall not publicly release any of its findings until such findings have been provided to the mayor, the president of council, council members and the chief of police or corrections, and a period of three working days has elapsed.

Section 3: That Chapter 98, Article II, Section 98-26(b)(3) of the City of Atlanta Code of Ordinances be amended by deleting the existing language in its entirety and substituting therefore as follows:

(3) Cause an investigation into an employee's conduct when the employee's conduct indicates probable cause for disciplinary action. **All such investigation should be completed within 90 days. If the investigation has not been completed within 90 days, upon request of the of the Citizens Review Board, the police chief or his/her designee must appear before the Citizens Review Board during a regularly scheduled meeting of same to specify the reasons for the delay.**

Section 4: That Chapter 98, Article IV, Section 98-153(b)(3) of the City of Atlanta Code of Ordinances be amended by deleting the existing language in its entirety and substituting therefore as follows:

(3) Cause an investigation into an employee's conduct when the employee's conduct indicates probable cause for disciplinary action. **All such investigation should be**

completed within 90 days. If the investigation has not been completed within 90 days, upon request of the of the Citizens Review Board, the chief of corrections or his/her designee must appear before the Citizens Review Board during a regularly scheduled meeting of same to specify the reasons for the delay.

Section 5: The amendments reflected in this ordinance shall become effective immediately upon the Mayor's signature.

Section 6: Should it be found that any ordinance or parts of any ordinance are in conflict herewith, then those sections contained herein shall be deemed controlling.

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: GREG PRIDGEON

Legislative Counsel (Signature): Amber A. Robinson

Contact Number: (404) 330-6494

Originating Department: Department of Law

Committee(s) of Purview: Public Safety and Legal Administration

Council Deadline: Cycle 21 / November 26, 2008

Anticipated Committee Meeting Date(s): December 9; January 13

Anticipated Full Council Date: January 19

Commissioner Signature _____
Jerry L. De Loach, Deputy City Attorney

Chief Procurement Officer Signature N/A

CAPTION

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Financial impact (if any): N/A

Mayor's Staff Only

Received by CPO: _____ Received by LC from CPO: _____
(date) (date)

Received by Mayor's Office: _____ Reviewed by: _____
(date) (date)

Submitted to Council: _____
(date)

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ATTN: GREG PRIDGEON

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Commissioner Signature Jerry L. De Loach, Deputy City Attorney

Chief Procurement Officer Signature N/A

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Financial impact (if any): N/A

Mayor's Staff Only

Received by CPO: _____ Received by LC from CPO: _____
(date) (date)

Received by Mayor's Office: 12.1.08 Reviewed by: _____
(date) (date)

Submitted to Council: _____
(date)